

**APPROVED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R084-19**

Filed August 26, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-3, 6-14, 17 and 18, NRS 459.485 and 459.490; §§4 and 5, NRS 444.560, 459.485 and 459.490; §§15 and 16, NRS 459.485, 459.490 and 459.550.

A REGULATION relating to waste management; defining certain terms relating to hazardous waste; revising certain provisions relating to solid waste management; revising provisions concerning certain federal regulations adopted by reference and exceptions thereto relating to hazardous waste; revising certain provisions relating to manifests for a generator of hazardous waste; revising certain references to federal regulations relating to hazardous waste; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the State Environmental Commission to adopt regulations relating to systems of hazardous waste management, which must be based on studies, guidelines and regulations of the Federal Government and meet certain other requirements. (NRS 459.485, 459.490) Existing federal law replaced the term “conditionally exempt small quantity generator” with “very small quantity generator.” (81 FR 85732) **Section 2** of this regulation defines the term “very small quantity generator.” Consistent with federal law, **sections 4, 9 and 16** of this regulation replace “conditionally exempt small quantity generator” in existing regulation with “very small quantity generator.” **Sections 6 and 18** of this regulation make conforming changes.

Existing regulation: (1) requires a generator who generates more than 100 kilograms of hazardous waste in a calendar month and accumulates hazardous waste on-site to maintain a written record of inspections conducted of containers and tanks; (2) prohibits the mixing of used oil except in certain circumstances where the Division of Environmental Protection of the State Department of Conservation and Natural Resources grants express written approval; (3) authorizes a person who is cited for certain violations to deliver a written request for a hearing to the Division and, upon receipt of such a request, requires the Division to deliver written notice of such hearing to the person; and (4) authorizes certain cited persons to deliver a written request for a continuance of a hearing to the hearing officer. (NAC 444.8677, 444.8681, 444.8716,

**Section 1.** Chapter 444 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

**Sec. 2.** *“Very small quantity generator” means a generator which generates less than or equal to the following amounts in a calendar month:*

- 1. 100 kilograms (220 pounds) of non-acute hazardous waste;*
- 2. 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e); and*
- 3. 100 kilograms (220 pounds) of any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).*

**Sec. 3.** *“Written” includes, without limitation, any form that results in a permanent record and is handwritten, typed, printed or electronically created.*

**Sec. 4.** NAC 444.6665 is hereby amended to read as follows:

444.6665 1. The owner or operator shall carry out a program at the municipal solid waste landfill unit for detecting and preventing the disposal of regulated hazardous waste and PCB wastes. The program must include, but is not limited to:

- (a) Random inspections of incoming loads;
- (b) Records of inspections;
- (c) Training persons employed at the unit to recognize regulated hazardous waste and PCB wastes;
- (d) Procedures for handling hazardous waste or PCB wastes found at the site; and

6. Not be within one-fourth mile of the nearest inhabited domestic dwelling or place of public gathering or be within 1,000 feet of a public highway, unless special provisions for the beautification of the site and the control of litter vectors are included in the design and approved by the solid waste management authority.

7. Not be within 1,000 feet of any surface water or be within 100 feet of the uppermost aquifer if the site is approved after September 2, 1992, unless approved by the solid waste management authority.

8. Be approved by the solid waste management authority.

~~9. If the site accepts hazardous waste from conditionally exempt small quantity generators as defined in 40 C.F.R. § 261.5, comply with the provisions of NAC 444.6785 and 444.679.~~

**Sec. 6.** NAC 444.850 is hereby amended to read as follows:

444.850 As used in NAC 444.850 to 444.8746, inclusive, unless the context otherwise requires:

1. The words and terms defined in NAC 444.8505 to 444.861, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

2. Except for the words and terms otherwise defined in NAC 444.8505 to 444.861, inclusive, *and sections 2 and 3 of this regulation*, the words and terms defined in 40 C.F.R. § 260.10, as adopted by reference in NAC 444.8632, have the meanings ascribed to them in that section.

**Sec. 7.** NAC 444.8618 is hereby amended to read as follows:

444.8618 A generator, transporter or facility owner or operator who is required to obtain an EPA identification number pursuant to 40 C.F.R. ~~151~~ §§ 262.12, 263.11, 264.1(j)(1), 264.11 or

(a) Volume 40 C.F.R. Parts 1 to 49, inclusive.....	\$66
(b) Volume 40 C.F.R. Parts 100 to 135, inclusive .....	51
(c) Volume 40 C.F.R. Parts 260 to 265, inclusive.....	56
(d) Volume 40 C.F.R. Parts 266 to 299, inclusive .....	56

**Sec. 9.** NAC 444.86325 is hereby amended to read as follows:

444.86325 1. The following sections and parts of Title 40 of the Code of Federal

Regulations, and any reference to those sections and parts, are not adopted by reference:

- (a) Section ~~2.101(a)(1)-(10);~~ **2.101(a)(1)-(4);**
- (b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;
- (c) Sections 260.1(b)(4)-(6) and 260.20, 260.21 , ~~and~~ 260.22 ~~H;~~ **and 260.42;**
- (d) ~~Section 261.5(j);~~ **Sections 261.4(a)(23), 261.4(a)(24), 261.4(a)(27), 261.4(b)(4), 261.4(h), 261.400(a)-(b), 261.410(e)-(f), 261.411, 261.420, 261.1035(b)(1) and 261.1064(b)(2);**
- (e) **Section 262.10(l), 262.13(f)(1)(iii) and** Part 262, Subpart ~~H;~~ **K;**
- (f) Sections 264.1(d), 264.1(f), **264.15(b)(5),** 264.149, 264.150, ~~264.301(1);~~ **264.301(l),** 264.1050(h), 265.1(c)(4), 265.149, 265.150, 265.430 and 265.1050(g);
- (g) Section 266.111;
- (h) Section 267.150;
- (i) Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) and 268.44;
- (j) Sections 270.1(c)(1)(i), 270.60(b) and 270.64;
- (k) Part 278; and

(b) Section 260.2(a) is adopted except that “ the Freedom of Information Act, 5 U.S.C. § 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b) ” must be replaced with “NRS 459.555 and any regulations adopted pursuant thereto.”

(c) *The definition of “hazardous secondary material generator” in section 260.10 is adopted except that “261.2(a)(2)(ii) and” is deleted.*

(d) Section 260.11(a) is adopted except that “and 278” is deleted.

~~(d)~~ (e) Section 260.11(c)(3)(vii) is adopted except that “and § 278.3(b)(1)” is deleted.

~~(e)~~ (f) Section 260.33(b) is adopted except that “in the locality where the recycler is located” is deleted.

~~(f)~~ (g) *Section 260.34(a) is adopted except that “Determinations may also be granted by the State if the State is either authorized for this provision or if the following conditions are met: (1) The State determines the hazardous secondary material meets the criteria in paragraphs (b) or (c) of this section, as applicable; (2) The State requests that EPA review its determination; and (3) EPA approves the State determination” is deleted.*

(h) Section 260.41(a) is adopted except that “or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal” is deleted.

~~(h)~~ (i) Section 261.4(e)(3)(iii) is adopted except that “in the Region where the sample is collected” is deleted.

~~(i)~~ (j) Section ~~262.11(e)(1)~~ **262.11(d)(2)** is adopted except that “, or according to an equivalent method approved by the Administrator under 40 C.F.R. Part 260.21” is deleted.

(2) Require that all orders, requests, instructions and notices to the Trustee regarding a financial assurance mechanism for a facility in this State be in writing and signed by the Director; and

(3) Delete “an agency of the United States Government” from the second paragraph of the trust agreement.

~~(n)~~ **(p)** Part 270 is adopted with the following exceptions:

- (1) Delete all references to “interim authorization”; and
- (2) Delete “or 267.150” in § 270.290(r).

~~(o)~~ **(q)** Section 279.40(c) is adopted except that “unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste” is deleted.

**(r) Section 279.82 is adopted except that:**

**(1) Delete “except when such activity takes place in one of the states listed in paragraph (c) of this section”; and**

**(2) Delete “A State may petition (e.g., as part of its authorization petition submitted to EPA under § 271.5 of this chapter or by a separate submission) EPA to allow the use of used oil (that is not mixed with hazardous waste and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such programs must minimize the impacts of use as a dust suppressant on the environment” and replace with “The list of states**

*(k) In section 262.212(e)(3), delete “§ 261.5(c) and (d)” and replace with “§ 262.13(c) and (d)”;*

*(l) In section 264.1030(b)(3), delete “40 CFR 262.34(a)” and replace with “40 CFR 262.17(a)”;*

*(m) In section 264.1050(b)(2), delete “40 CFR 262.34(a)” and replace with “40 CFR 262.17(a)”;*

*(n) In section 266.100(c)(3), delete “conditionally exempt small quantity generators under § 261.5” and replace with “very small quantity generators under §§ 262.13 and 262.14”;*

*(o) In section 266.108(c), delete “§ 261.5” and replace with “§§ 262.13 and 262.16”;*

*(p) In section 273.13(c)(2)(iii)-(iv), delete both references to “40 CFR 262.34” and replace with “40 CFR 262.15 and 262.16”; and*

*(q) In section 273.33(c)(2)(iii)-(iv), delete both references to “40 CFR 262.34” and replace with “40 CFR 262.15 and 262.17”.*

**Sec. 10.** NAC 444.8633 is hereby amended to read as follows:

444.8633 Except as otherwise provided in NAC 444.8634:

1. Any references in any part of Title 40 of the Code of Federal Regulations to the U.S. Environmental Protection Agency, “United States Environmental Protection Agency,” “Agency,” “EPA Headquarters,” “EPA Region(s)” or “EPA” which have been adopted by reference in NAC 444.8632 shall be deemed to mean the “Department” with the following exceptions:

(a) Any reference to “EPA” identification numbers;

(b) Any reference to “EPA” hazardous waste numbers;



~~{(11)}~~ (12) The provisions of section 270.2 defining “Administrator,” “approved program or approved State,” “Director,” “Environmental Protection Agency,” “EPA,” “final authorization,” “permit,” “person,” “Regional Administrator” and “state/EPA agreement”; and

**(13) Section 279.82(b);**

(i) Any reference to “EPA,” “Agency” or “EPA Director of the Office of Solid Waste” in ~~{section}~~ sections 262.21 and 262.24(a)(3) and any subsequent reference to EPA’s oversight of the manifest registry process in Part 262, Subparts C and ~~{E-}~~ H, sections 264.71(j), 265.71(j), **Part 264, Subpart FF and Part 265, Subpart FF; and**

**(j) Any reference to “EPA,” “federal requirements” or internal reference to section 262.25 in any of the provisions addressing the federal requirements for electronic manifest signatures in Title 40 of the Code of Federal Regulations.**

2. Any references in any part of Title 40 of the Code of Federal Regulations to the “Regional Administrator” , ~~{or}~~ “Administrator” **or “the Regional Administrator, or State Director (if located in an authorized State)”** which have been adopted by reference shall be deemed to mean the “Director” with the following exceptions:

(a) The provisions of section 124.2(a) defining “Administrator,” “Director,” “interstate agency,” “major facility” and “Regional Administrator”;

(b) Sections 124.2(b), 124.5(d), 124.6(e) and 124.10(b);

(c) The provisions of section 260.10 defining “Administrator,” “Regional Administrator” and “hazardous waste constituent”;

(d) ~~{Section}~~ **Sections 260.23 and 260.30 to 260.34, inclusive;**

**(e) Sections 261.30(b), ~~{Section}~~ 261.4 and Part 261, Appendix IX;**



~~—(g)~~ (e) Section 270.1(a)(2); and

~~+(h)~~ (f) The provisions of section 270.2 defining “RCRA” and the provision of section 270.51 defining “RCRA permit.”

4. Following any references in any part of Title 40 of the Code of Federal Regulations to a specific provision of the Resource Conservation and Recovery Act, “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C,” which have been adopted by reference in NAC 444.8632, the phrase “or any comparable provisions of NRS 459.400 to 459.600, inclusive, and any regulations adopted pursuant thereto” shall be deemed to be added with the following exceptions:

- (a) Section 270.1(a)(2);
- (b) Section 270.72(a)(5); and
- (c) Section 270.72(b)(5).

5. Any references in any part of Title 40 of the Code of Federal Regulations to the “Department of Transportation” or “DOT” which have been adopted by reference in NAC 444.8632 shall be deemed to mean “the Department of Transportation of the United States.”

6. Any references in any part of Title 40 of the Code of Federal Regulations to “state(s),” “authorized state,” “approved state” or “approved program” which have been adopted by reference in NAC 444.8632 shall be deemed to mean “Nevada” with the following exceptions:

- (a) The provisions of section 124.2(a) defining “Director,” “interstate agency,” “person” and “state”;
- (b) The provisions of section 260.10 defining “person,” “state” and “United States”;
- (c) Part 262;

(g) Any references to the employment rankings of “GS-8” or “GS-9” shall be deemed to mean, respectively, “grade 31” and “grade 32” of the Nevada Personnel System established pursuant to NRS 284.170, and any reference to a fee for the cost of staff time shall be deemed to mean, respectively, \$15 and \$22.50 per half hour;

(h) Any references to duplication or reproduction charges of “\$0.15 per page” shall be deemed to mean “10 cents per page”; and

(i) Any reference to an officer except the general counsel shall be deemed to mean the “Administrator of the Division.”

2. ~~Any reference to the “Administrator” in 40 C.F.R. § 262.12, 263.11 or 264.1(j)(1) shall be deemed to include the “Director.”~~

~~3.~~ Any reference to the “EPA” in 40 C.F.R. § 264.11 or 265.11 shall be deemed to include the “Director.”

~~4.~~ 3. Fees required to be paid to the “U.S. Environmental Protection Agency” or the “United States Environmental Protection Agency” pursuant to 40 C.F.R. § 2.107 must be paid to the “State of Nevada” and deposited in the Account for the Management of Hazardous Waste.

**Sec. 12.** NAC 444.8655 is hereby amended to read as follows:

444.8655 1. Except as otherwise provided in 40 C.F.R. Part 262, Subpart B, as adopted by reference in NAC 444.8632, the generator shall include in the manifest the hazardous waste number assigned by the United States Environmental Protection Agency, if appropriate.

2. The manifest must consist of at least the number of copies which will provide:

(a) ~~The Division with one copy;~~

NAC 444.8632, the hazardous waste number assigned by the United States Environmental Protection Agency.

**Sec. 15.** NAC 444.8677 is hereby amended to read as follows:

444.8677 A generator who generates more than 100 kilograms of hazardous waste in a calendar month and accumulates hazardous waste on-site shall, in addition to complying with the requirements for accumulation set forth in 40 C.F.R. ~~§§ 262.34,~~ §§ 262.15, 262.16 and 262.17, as adopted by reference in NAC 444.8632, maintain a written record of inspections conducted of containers and tanks. Those records must be kept on-site for not less than 3 years and must include:

1. The date and time of an inspection;
2. The name of the inspector;
3. A notation of the inspector's observations; and
4. The date and nature of any repairs made or other remedial action taken.

**Sec. 16.** NAC 444.8681 is hereby amended to read as follows:

444.8681 1. The mixing of used oil with hazardous wastes is prohibited except for the following:

(a) Mixtures of used oil and a hazardous waste which is hazardous solely because it exhibits the characteristic of ignitability specified in 40 C.F.R. § 261.21, as adopted by reference in NAC 444.8632, and is not listed in Subpart D of 40 C.F.R. Part 261, as adopted by reference in NAC 444.8632, by a ~~conditionally exempt~~ very small quantity generator who generates and mixes less than 5 gallons of such waste per calendar month with its used oil, if the resulting mixture does not exhibit the characteristic of ignitability specified in 40 C.F.R. § 261.21.

**Sec. 17.** NAC 444.8706 is hereby amended to read as follows:

444.8706 1. In addition to any other remedy provided by law for such a violation and except as otherwise provided in subsection 2, any person who violates any provision of NRS 459.400 to 459.600, inclusive, or any regulation adopted pursuant to those sections, including the provisions of the federal regulations adopted by reference in NAC 444.8632, may be required to pay an administrative penalty pursuant to NRS 459.500 in an amount to be determined by the Division.

2. The administrative penalty may not exceed the amount specified in this subsection for a violation of any of the following provisions:

Section Violated	Nature of Violation	Maximum Penalty
40 C.F.R. § 262.11	Failure to determine whether solid waste is hazardous.	\$300
40 C.F.R. § <del>{262.12(a)}</del> <b>262.18(a)</b>	Treatment, storage, disposal, transportation or offering for transportation of hazardous waste without identification number.	200

	acceptance on manifest.	
40 C.F.R. § 262.23(a)(3)	Failure to retain copy of	100
	manifest.	
40 C.F.R. § 262.23(b)	Failure to give transporter	300
	remaining copies of manifest.	
40 C.F.R. § 262.23(d)	Failure to send required	200
	number of copies of dated and	
	signed manifest for shipment by rail.	
40 C.F.R. § 262.30	Failure to comply with	400 per load
	regulations for packaging.	
40 C.F.R. § 262.31	Failure to comply with	200 per load
	regulations for labeling.	
40 C.F.R. § 262.32(a)	Failure to comply with	200 per load
	regulations for marking.	

40 C.F.R. § 262.40(a)	Retention of copy of manifest.	200
40 C.F.R. § 262.40(b)	Retention of copies of	200 per record
	reports.	
40 C.F.R. § 262.40(c)	Retention of records.	200
40 C.F.R. § 262.41	Failure to submit properly	500
	completed biennial report.	
40 C.F.R. § 262.42(a)(1)	Determination by generator of	100
	status of waste.	
40 C.F.R. § 262.42(a)(2)	Submittal of exception report.	100
<del>NAC 444.8666</del>	<del>Failure to submit copy of</del>	<del>500</del>
	<del>manifest to the Division.</del>	
NAC 444.8671	Failure to label	100
	container properly.	

1. Except as otherwise provided in subsection 2, the owner or operator of a facility for the management of hazardous waste shall pay to the Division, to offset the cost to process and review an application for a variance:

(a) A fee of \$50 for each hour of staff time devoted to processing and reviewing the application; and

(b) The actual cost of travel, per diem, salaries and any other expenses incurred by the Commission in connection with the application.

2. The maximum amount an applicant must pay pursuant to subsection 1 is:

(a) Five thousand dollars in the case of a facility or proposed facility handling less than 1,000 tons of hazardous waste annually.

(b) Ten thousand dollars in the case of a facility or proposed facility handling 1,000 tons or more but less than 10,000 tons of hazardous waste annually.

(c) Twenty thousand dollars in the case of a facility or proposed facility of unspecified capacity or handling 10,000 tons or more of hazardous waste annually.

3. The Division shall maintain an accurate account of the time and expense associated with the review of each application and, upon completion of the review, refund to the applicant any difference between:

(a) The amount required to cover the cost of the review; and

(b) The amount paid at the time the application was filed.

4. The Commission shall not issue a variance unless all applicable fees are paid.